IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.592 OF 2005

The Maharashtra Housing and Area
Development Authority Appellant

Vs.

The Panch Pushpa Co-operative
Housing Society Ltd. & ors. Respondents

Mr.R.M.Savant for appellant.
Mr.A.L.Gore with Mr. Uttam Parmar for resp.nos.1 & 2.

CORAM: B.H.MARLAPALLE,J.
August 03, 2005.

ORAL ORDER:

1. Heard Mr.Savant, the learned counsel for the appellant and Mr.Gore, the learned counsel for respondent nos.1 and 2. Perused the affidavit-in-reply filed by the respondent and also the map of the entire plot consisting of Building Nos.28 and 29 (Saptarshi Co-op. Hsg.Soc.), Building Nos. 30 to 34 (Panchapushpa Co-op. Hsg. Soc.) and the newly constructed buildings adjacent to Samaj Mandir Hall and the other common amenities. Admittedly the appellants have constructed two additional buildings in the recent past with 28 tenaments in each building towards the North of Samaj Mandir Hall. While access to these buildings has been provided from the 40 ft. wide road on the

Southern side in terms of the two gates of 20 ft. width, the appellants propose to have one gate of 20 ft. width and one security post gate for the newly constructed tenaments leading towards the 20 ft. wide road adjacent to building nos.28 and 29. This has been objected to by the respondents-plaintiffs. Notice of Motion No.2738 of 2002 in S.C.Suit No.3507 of 2002 has been made absolute in terms of prayer clause (a) by the impugned order dated 11th April 2005. Prayer clause (a) in the said Notice of Motion reads as under:

> "(a) Pending the hearing and final disposal of the suit the defendants, their officers, representatives, agents or other servants be restrained by an order of injunction against the suit land i.e. Sardar Nagar No.3, Sion Koliwada, Mumbai 400 022 and as under (i) to enter into the society's premises and (ii) not to remove a fencing boundary of land between society and Samaj Mandir Plot more particularly mentioned in the plaint."

2. The documents placed on record viz. the Lease Deed dated 28-2-2001 and the Sale Deed dated 28-2-2001 show that the entire land forms one common plot and the internal roads of 20 ft. width are made for use of the existing tenament holders but that would not debar the newly constructed tenament

holders from usage of the said common roads. However, in order to provide safely it may not be advisable to have additional gate and Mr.Sawant, therefore, on taking instructions stated that the appellants will provide only one gate of 20 ft. width entering into the existing 20 ft. wide road adjacent to building nos.28 and 29. The construction of the wall of about 5 to 6 ft. would be an additional measure of safety in place of the barbed wire fencing and the proposed width of the said wall is not going to be in excess of 9 inches. At the same time the apprehension of the plaintiffs that the internal roads would be used for parking of two wheelers or four wheelers is also not misplaced. It shall be the responsibility of all the tenament holders and the appellants will have to also ensure that the existing internal roads of 20 ft. width are free from any vehicle parking. In the premises the impugned order stands modified as under and the appeal is disposed off in terms of the same.

(a) The appellants to construct a brick wall in place of the barbed wire fencing upto the height of 5 to 6 ft. and with 9 inches width.

(b) There shall not be any additional gate except the 20 ft. wide gate as proposed.

(c) The existing 20 ft. wide roads inside the premises shall not be used for any parking of vehicles, two wheelers as well as four wheelers.

(d) In case the appellants are required to take steps for conveyance of the property in favour of the existing as well as proposed Societies as per the rules, the same shall be done as expeditiously as possible and in any event within a period of six months from today.

(e) the existing trees shall not be disturbed.

3. Mr.Gore at this stage made an oral application for stay of this order. The application is hereby rejected.

(B.H.MARLAPALLE,J.)